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SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. 82-6425

RONALD RAYMOND WOOMER, Petitioner,  
versus,  
STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A  
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Harold M. Coombs, Jr.  
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OF April, 1983  
Karen Y. Newton (LS.)  
Notary Public for South Carolina  
Commission Expires 9-17-86

QUESTION PRESENTED

I.

Did the trial court commit error in its rulings regarding the testimony of State's witness Dr. Mario Galvarino?

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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in State v. Woomer, \_\_\_ S.C. \_\_\_, 299 S.E.2d 317 (1982), as reproduced in Petitioner's Appendix A at pages A1-A6.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTION PRESENTED

I.

Did the trial court commit error in its rulings regarding the testimony of State's witness Dr. Mario Galvarino?

## ARGUMENT

### I.

The trial court committed no error in its rulings regarding the testimony of State's witness Dr. Mario Galvario.

During the State's case in chief, the State presented testimony of Dr. Mario Galvarino, Chief Forensic Psychiatrist for the State of South Carolina. Dr. Galvarino had supervised examination of Petitioner pursuant to Sections 44-23-410 and 420, Code of Laws of South Carolina (1976). Petitioner had been committed on two occasions by the court, once for a diagnosis of Petitioner's mental condition as well as clinical findings bearing on the issue of whether or not Petitioner was capable of understanding the proceedings against him and assisting in his own defense; and once on the question of his sanity. During these periods of commitment, extensive psychological and psychiatric testing was conducted upon Appellant to determine his mental condition, competency to stand trial and findings on the question of Petitioner's sanity. At the conclusion of these tests, it was determined that Petitioner was indeed competent to stand trial and that he was not insane at the time of the commission of the crimes.

At trial, an extensive evidentiary hearing was held outside the presence of the jury wherein the testimony of Galvarino, as well as two clinical psychologists involved in the testing of Petitioner, was heard. Petitioner contended

during this hearing, as he now contends on appeal, that the examination of Petitioner violated his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel citing this Court's recent decision in Estelle v. Smith, 451 U.S. 454, 68 L. Ed.2d 359, 101 S. Ct. 1866 (1981). He further contended that the testimony of Dr. Galvarino regarding the future dangerousness of Appellant was incompetent and outside the expertise of Dr. Galvarino; and therefore inadmissible. The trial court permitted Dr. Galvarino to testify as to his diagnosis of Appellant's mental condition; and specifically as to his diagnosis, as a result of the extensive testing conducted, that:

Based on our studies and observations, it is my opinion that Mr. Woomer, first of all, is not mentally ill. He's not insane. It is my opinion that Mr. Woomer does have an anti-social personality trait. That means that he will not conform to authority. He will not conform to the law, furthermore, he will, in all likelihood, if the situation will arise, repeat, over and over, the crimes that he had perpetrated in the past. This type of individual, in my opinion, they thrive on people's pain, and they will do their utmost in order to obtain their satisfaction, which, in this case, only can be obtained through people's suffering. I do not perceive any type of treatment for this type of individual. (Tr. p. 1574, lines 11-22).

The principle thrust of Estelle addressed the issue of a defendant's Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel in context of the psychiatric examination to determine mental condition. It was unequivocally held by this Court, under a factual situation completely distinguishable from the

instant case, that a defendant indeed has Fifth and Sixth Amendment rights at such a "critical stage" of criminal proceedings against him. However, Respondent further contends that these rights of a defendant have always been recognized in South Carolina at this stage of the proceedings as exhibited by the procedures utilized in the instant case.

Respondent first deems it important to distinguish the facts in Estelle. In that case, the defendant had been charged with capital murder and appointed counsel. Without counsel's knowledge, a judge informally ordered the State's attorney to arrange a psychiatric examination of the defendant to determine his competency to stand trial. In fact, counsel for the defendant never even knew until well into the trial that such an examination had taken place. Furthermore, the psychiatrist's written report to the court, which was seen by counsel during the trial, in no way indicated that he had arrived at a diagnosis regarding the defendant's propensity for future dangerousness. This element was, of course, one of the elements which had to be proven by the State in order to justify sentence of death under Texas law.

During the examination, during which the right to counsel at any time was absolutely withheld, the defendant was never advised of his right to remain silent as well as the fact that anything he said could be used against him in court. As this Court held, he was unconstitutionally



compelled to give statements during a psychiatric examination which he and his attorneys were simply unaware would later be used against him in court.

In the instant case, as the testimony clearly establishes, Petitioner was not only advised of his constitutional rights several times subsequent to his arrest, but was specifically advised by Dr. Galvarino and the clinical psychologists that he had the right to remain silent, that he could refuse to answer questions and in fact leave at any time, that there was no physician/patient privilege in South Carolina, that a report would be sent to the court and that anything he said could be used against him in court. (Tr. p. 1554, lines 2-11). Furthermore, Petitioner and his counsel fully acquiesced in the psychiatric testing to which Petitioner was subjected at the State Hospital. Respondent respectfully submits that it cannot now be logically argued, by Petitioner, that he was not fully aware of the extent of the testing to which he was submitted, the extent of psychiatric conclusions which necessarily are involved in a finding of competency and, more significantly, findings as to mental condition and sanity. In essence, Respondent respectfully submits that the instant case demonstrates that Estelle, supra, has placed no greater procedural burden upon the State than has been always recognized and followed. Petitioner was committed to the State Hospital with his as well as his counsel's full consent. The issue of his mental condition,

as well as his sanity, was indeed at issue not only as it was relevant to his mental state at the time of the crime but also as to the statutory mitigating circumstances of mental or emotional disturbance, defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law as well as the alleged domination of another person. As was observed by this Court in Estelle, the motives behind submitting to such testing always must consider that the results may benefit the defendant, and his submission of statutory mitigating circumstances, or the State.

Respondent respectfully submits that there simply is no question that findings as to future dangerousness are not only completely relevant and contingent to findings as to mental condition and insanity; but are completely relevant to statutory mitigating circumstances intended to be and actually presented by Petitioner at trial. The fact that results of the psychiatric testing did not comport with Petitioner's defense is simply irrelevant.

Respondent respectfully submits that, as has always been the case in South Carolina, the mandate of Estelle, supra, was absolutely complied with in the instant case. Appellant submitted to psychiatric testing, not only with his full consent as well as the consent of his counsel, but with the hope that the result would benefit his defense. His decision to submit to this testing was made with complete understanding of his Fifth Amendment right against

self-incrimination; as well as with complete exercise of his right to counsel. Petitioner fully understood his Fifth Amendment rights, not only as a result of the advice of counsel but as a result of warnings given to him by Dr. Galvarino and his associates. Petitioner's contentions alleging otherwise are without merit.

Concerning Petitioner's arguments as to the reliability of psychiatric testimony on future dangerousness, Respondent is certain that if such testimony had been favorable to Petitioner, i.e., that he was under the influence of mental or emotional disturbance and cannot "conform his conduct to the requirements of law," as a mitigating rather than aggravating factor, he would not now be questioning the reliability of such testimony. In fact, Respondent contends it would indeed be a distressing commentary on our criminal justice system if psychiatric testimony was considered reliable only when it benefitted the defendant. At any rate, Respondent respectfully submits that this Court has in no way disapproved of the use of psychiatric testimony bearing on the issue of future dangerousness. In fact, as the Court observed, "prediction of future criminal conduct is an essential element in many of the decisions rendered throughout our criminal justice system." Estelle, supra.

The South Carolina Supreme Court has unequivocally held in State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979), that the characteristics of the defendant are relevant and necessary to a determination by a sentencing body as to

appropriate sentence in a capital case. Testimony as to future dangerousness of Petitioner was entirely relevant to the character of the defendant. Hence, it was properly accepted.

#### CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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